

VOLUME VIII
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----x
PENNY T. COLLINS,

Plaintiff,

vs.

5:07-CV-493

THE STATE OF NEW YORK, NEW YORK
STATE DEPARTMENT OF CORRECTIONAL SERVICES,
GLENN S. GOORD, JOHN BURGE, HAROLD GRAHAM,
and TROY MITCHELL,

Defendants.
-----x

Transcript of a Jury Trial held on March 21,
2012, at the James Hanley Federal Building, 100 South
Clinton Street, Syracuse, New York, the HONORABLE
GLENN T. SUDDABY, United States District Judge,
Presiding.

A P P E A R A N C E S

For Plaintiff: MAIREAD E. CONNOR, ESQ.
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Suite 703
Syracuse, New York 13202

For Defendant: SATTER, ANDREWS LAW FIRM
(Mitchell) Attorneys at Law
217 South Salina Street, 6th Floor
Syracuse, New York 13202
BY: ROSS P. ANDREWS, ESQ.

For Defendants: STATE OF NEW YORK
(All Remaining) Office of Attorney General
The Capitol
Albany, New York 12224
BY: CATHY Y. SHEEHAN, AAG
ROGER KINSEY, AAG

1 (Court in recess for jury deliberations,
2 9:00 a.m. to 11:49 a.m.)

3 (In Chambers, 11:49 a.m.)

4 THE COURT: We received a note from the jury,
5 it's been marked as Court Exhibit Number 3, it reads, "Your
6 Honor, may we have use of a calculator?" And what the court
7 has done in response to this note, to expedite getting the
8 calculator into them, I had my judicial assistant contact
9 each of the attorneys representing the various parties in
10 this litigation to see if anyone had any objections or wanted
11 to put anything on the record before we sent a calculator in
12 to the jury. We got a response from each one of the
13 attorneys that they had no objection, therefore, we've sent
14 the calculator in, and we will confirm counsel's position the
15 next time we get a note and we bring everybody, all the
16 parties and attorneys back together in the courtroom, that
17 they indeed had no objection to providing a calculator to the
18 jury.

19 (Court in recess for jury deliberations,
20 11:49 a.m. to 1:19 p.m.)

21 (Open Court, Jury Out, 1:19 p.m.)

22 THE COURT: Okay. First of all, meet Kelly
23 Easton, my judicial assistant. Lori had a little bit of a
24 family emergency so she couldn't be here, okay, so Kelly is
25 going to perform her duties for the rest of the proceedings.

1 Before -- we do have a verdict and before we
2 get to that, I just want to go on the record. In counsel's
3 absence, we took a note from the jury requesting a
4 calculator. It was -- it's been marked as Court's Exhibit 3,
5 I put all this on the record, we contacted individually the
6 attorneys for all the parties and no one objected to a
7 calculator being sent in. We did that by phone, because it
8 was my intention to get them a calculator as soon as possible
9 and not have everybody come running back to court for that
10 purpose. So just to confirm for the record, Ms. Connor, were
11 you contacted and you had no objection?

12 MS. CONNOR: Yes, your Honor, no objection.

13 THE COURT: Okay. Ms. Sheehan, for the state
14 defendants?

15 MS. SHEEHAN: Yes, your Honor, and no
16 objections.

17 THE COURT: And Mr. Andrews?

18 MR. ANDREWS: Same, your Honor.

19 THE COURT: Okay. Now we have a verdict so
20 we're going to bring this jury in and we're going to take
21 their verdict, okay. Bring them in, Bruce.

22 (Jury Present, 1:20 p.m.)

23 THE COURT: Okay. The record should reflect
24 we have the ladies and gentlemen of the jury, plaintiff,
25 plaintiff's counsel, defendants, and defense counsel. How

1 was lunch?

2 A JUROR: Very good.

3 THE COURT: Okay. Good. It's my
4 understanding that we have a verdict and the foreperson,
5 we're going to ask you to stand and we're going to take that
6 verdict. Meet Kelly Easton, my judicial assistant. Lori,
7 who has been here for the last eight, nine days, whatever it
8 is now, eight days, nine days, I guess, had a bit of a family
9 emergency so she had to leave, everything's going to be okay
10 we hope, but she had to leave us, so Kelly is going to
11 perform her duties for the rest of the proceedings.

12 So Kelly, if you could, foreperson, would you
13 please stand. Please take the verdict.

14 THE CLERK: In the matter of Penny T. Collins,
15 plaintiff, v. New York State Department of Correctional
16 Services, John Burge, Harold Graham, and Troy Mitchell,
17 Defendants, Case Number 5:07-CV-0493, the jury finds, as to
18 Claim 1, hostile work environment against DOCS under Title
19 VII and New York Human Rights Law. Did the plaintiff prove,
20 by a preponderance of the evidence, that she was subjected to
21 a hostile work environment?

22 THE FOREPERSON: Yes.

23 THE CLERK: As to B, did plaintiff prove, by a
24 preponderance of the evidence, that a legal basis exists
25 under Title VII for imputing the conduct that created the

1 hostile work environment to DOCS?

2 THE FOREPERSON: I'm --

3 THE CLERK: 1b.

4 THE COURT: It would be on the first page.

5 THE FOREPERSON: Yes. Sorry. I was on the
6 wrong page.

7 THE COURT: Now we're going to the next page,
8 C.

9 THE CLERK: 1c. Did plaintiff prove, by a
10 preponderance of the evidence, that a legal basis exists
11 under New York Human Rights Law for imputing the conduct that
12 created the hostile work environment to DOCS?

13 THE FOREPERSON: Yes.

14 THE CLERK: As to Claim 2, Section 1983 sexual
15 harassment claim against defendants Burge, Graham, and
16 Mitchell --

17 THE FOREPERSON: No.

18 THE CLERK: -- A, Did plaintiff prove, by a
19 preponderance of the evidence, that one or more of defendants
20 Burge, Graham and/or Mitchell individually sexually harassed
21 her; as to defendant Burge?

22 THE FOREPERSON: No.

23 THE CLERK: As to defendant Graham?

24 THE FOREPERSON: No.

25 THE CLERK: As to defendant Mitchell?

1 THE FOREPERSON: No.

2 THE CLERK: Thank you. Okay. Turning to
3 damages, Section II, did plaintiff prove, by a preponderance
4 of the evidence, that she sustained an injury?

5 THE FOREPERSON: Yes.

6 THE CLERK: Under 4, did plaintiff prove, by a
7 preponderance of the evidence, that the act or omission
8 alleged in the claim or claims for which you found in favor
9 of plaintiff was the proximate cause of the injury or
10 injuries and/or emotional distress that she suffered?

11 THE FOREPERSON: Yes.

12 THE CLERK: Number 5. If -- state the amount
13 of damages to which plaintiff is entitled to recover in
14 compensation for her injuries. This is not to include back
15 pay and/or front pay.

16 THE FOREPERSON: The back or front pay?

17 THE COURT: No, just --

18 THE CLERK: No, this is just damages.

19 THE FOREPERSON: Just damages, which is
20 Number 5. 500,000.

21 THE CLERK: Okay, thank you. And under 6, if
22 you find the plaintiff is entitled to back pay and/or front
23 pay for lost wages, please state the amount, as to back pay.

24 THE FOREPERSON: 150,000.

25 THE CLERK: And as to front pay?

1 THE FOREPERSON: None.

2 THE CLERK: Okay. Thank you.

3 THE COURT: Okay. We received the verdict of
4 this jury. Do either of the parties or any of the parties,
5 excuse me, want this jury polled, Ms. Connor?

6 MS. CONNOR: No, your Honor.

7 MS. SHEEHAN: No, your Honor.

8 THE COURT: Ms. Sheehan, for the state
9 defendants?

10 MS. SHEEHAN: No, your Honor.

11 THE COURT: Mr. Andrews?

12 MR. ANDREWS: No, your Honor.

13 THE COURT: Okay. Very well. We'll -- we've
14 received and accepted your verdict, I'm going to send you
15 back to the jury room and I will come in and personally
16 excuse you from your jury service. I'll be there in just a
17 few minutes, I have a few things I need to take care of here.
18 But on behalf of the litigants, the attorneys that were
19 involved in this case, it's very clear that you paid
20 attention, you worked hard, you worked diligently, and we
21 appreciate your service and I know they appreciate your
22 service. And I thank you on behalf of the parties and these
23 attorneys and I'll be in to talk to you in just a minute,
24 okay. You can return to the jury room. Thank you.

25 (Jury Excused, 1:26 p.m.)

1 THE COURT: Okay. For counsel, there's just a
2 few things I want to put on the record for you. I'm going to
3 advise you that any motions must be filed within 28 days on
4 submit, and pursuant to Rule 50(b) of the Federal Rules of
5 Civil Procedure, motion for judgment as a matter of law must
6 be filed and served no later than 28 days after the entry of
7 the judgment.

8 Pursuant to Rule 59 of the Federal Rules of
9 Civil Procedure, motion for new trial must be served not
10 later than 28 days after the entry of the judgment, and
11 pursuant to Appellate Rule 4, notice of appeal must be filed
12 no later than 30 days after the entry of the judgment.

13 All of the original exhibits will be returned
14 to counsel. Whosever exhibits they were, it's your
15 responsibility to maintain them and provide them to the court
16 of appeals, if that becomes an issue or if it's required. So
17 you need to maintain all of your own exhibits.

18 Other than that, the court thanks you for your
19 courtesies, and to all of the litigants, we thank you for
20 your courtesies, and good luck to all of you. Ms. Sheehan.

21 MS. SHEEHAN: Two issues, your Honor. I'd
22 like to renew the Rule 50 as to Department of Corrections.

23 THE COURT: You want to do that now?

24 MS. SHEEHAN: In the alternative, I'd like to
25 ask for an extension of time to file the motions while in

1 trial, I've received notice that I will be in trial on
2 April 23rd in Syracuse and Mr. Kinsey will also be in trial
3 in Utica, so between us, could we please have the length of
4 extension that you're permitted to grant us.

5 THE COURT: Well, why don't we do this. With
6 regard to, if you're asking in the form of an oral motion,
7 I'm going to deny that motion at this time, but you certainly
8 have a right to submit it in writing, and why don't you just
9 put in writing your request for an extension, your intention
10 to file a written request, the 28 days, I know I reserved as
11 to Superintendent, retired Superintendent Burge, current
12 Superintendent, he'd like to be retired, I can see by his
13 reaction, Graham, but obviously the rest of them, I denied.
14 So you would have to make a new formal motion either for a
15 new trial or for a judgment as a matter of law, and you have
16 28 days to do that. If you're going to ask for extension,
17 put that in writing and we'll respond to you. Okay.

18 MS. SHEEHAN: Thank you, your Honor.

19 MS. CONNOR: Further matter, your Honor -- are
20 you done, Ms. Sheehan?

21 MS. SHEEHAN: Yes, I am.

22 MS. CONNOR: Just, plaintiff intends to move
23 this court for attorneys' fees under Title VII, and what is
24 the period of time for that? Is that -- does your Honor know
25 if that's the 28 days or is that greater than that?

1 THE COURT: You know, I'm not a hundred
2 percent sure of that. I know it has to be done in writing.

3 MS. CONNOR: I didn't know if you had an
4 order.

5 THE COURT: It's up to my discretion my clerk
6 is telling me, so how much time do you think you need to put
7 that together? They're asking for an extension so I guess
8 you could --

9 MS. CONNOR: I'm trying to make it -- I don't
10 know the type of extension that they're asking for at this
11 point. I would ask it to be coextensive, whatever extension
12 you give the defendants, if any. Otherwise I would ask for
13 30 days.

14 THE COURT: Okay. Well, we'll -- I'll give
15 you the 30 days at least and whatever extension I grant to
16 the state and their counsel, sounds like they have another
17 trial they're going to be engaged in, I will certainly give
18 you that same consideration and extension so everything could
19 be filed at once.

20 MS. CONNOR: Thank you, your Honor.

21 THE COURT: And each party will have an
22 opportunity to respond to the other's filings, we'll do it in
23 that manner. Okay.

24 MS. CONNOR: Yes, thank you.

25 THE COURT: Anything else?

1 MS. CONNOR: No.

2 THE COURT: Okay. All right then.

3 MR. KINSEY: If it please the court, are these
4 jurors at the end of their term?

5 THE COURT: They are.

6 MR. KINSEY: Would the court ask them if they
7 would speak to us? Of course it's their discretion and as
8 they wish.

9 THE COURT: Of course it is. I will ask them
10 and see if they -- if that's something they're willing to do,
11 but as you know, they don't have to.

12 MR. KINSEY: Exactly.

13 THE COURT: So I'm going to be talking to them
14 and I'll ask them about that.

15 MR. KINSEY: Thank you.

16 THE COURT: Okay. Good luck to everybody, all
17 right.

18 MS. SHEEHAN: Thank you, your Honor.

19 MS. CONNOR: Thank you, your Honor.

20 MR. ANDREWS: Thank you, your Honor.

21 THE CLERK: Court stands adjourned.

22 (Court Adjourned, 1:30 p.m.)

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C E R T I F I C A T I O N

I, JODI L. HIBBARD, RPR, CRR, CSR, Official
Court Reporter in and for the United States District Court,
Northern District of New York, DO HEREBY CERTIFY that I
attended the foregoing proceedings, took stenographic notes
of the same, and that the foregoing is a true and correct
transcript thereof.

JODI L. HIBBARD, RPR, CRR, CSR
Official U.S. Court Reporter